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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/593,786

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EXAMINER

COLBERT, ELLA

ART UNIT

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3696

MAIL DATE

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04/14/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/593,786	Applicant(s) DARIUS ET AL.	
	Examiner Ella Colbert	Art Unit 3696	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-6 are pending in this communication filed 11/24/08 entered as Notice of Appeal filed, Request for Pre-Appeal Conference, and Request for Extension of Time. The Pre-Appeals Conference decision was to reopen Prosecution dated 01/08/09 and the Pre-Appeals Conference decision was mailed on 01/09/09.

***Reopening of Prosecution After Notice of Appeals and
Request for Pre-Appeals Conference***

In view of the Pre-Appeals Conference Request filed on 11/24/08, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth here below. To avoid abandonment of the Application, Appellant must exercise one of the following two options: (1) file a reply under 37 CFR 1.111 (if this Office Action is non-final) or a reply under 37 CFR 1.113 (if this Office Action is final); or, (2) initiate a new Appeal by filing a notice of Appeal under 37 CFR 41.31 followed by an Appeal Brief under 37 CFR 41.37.

The previously paid notice of Appeal fee and Appeal Brief fee can be applied to the new Appeal. If however, the Appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then Appellant must pay the difference between fees and the amount previously paid. MPEP 1207.04.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing here below. MPEP 1002.02(d) and 1208.02.

Supervisory Patent Examiner (SPE) Signature.

/THOMAS A DIXON/

Supervisory Patent Examiner, Art Unit 3696

Drawings

The drawings are objected to because Drawing Figure 1 entitled "Replacement Sheet" filed June 27, 2006 shows Figure 1 as "Prior Art" and the "Replacement Sheet" of Figure 1 filed 05/14/03 does not show Figure 1 as "Prior Art". It is unclear from the two submissions of drawing figures whether Figure 1 is being considered a "Prior Art" or not "Prior Art". This cannot be determined from reading Applicant's Specification. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The amendment filed 04/23/07 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: Page 8, para. 0023 recites "... while only a single mortgage broker is illustrated in Figure 3, embodiments of the invention may include more than one mortgage broker"; Page 10, para. 0028 recites ... In Figure 5, element 302 is a specific instantiation of the virtual generic wholesale lender object of Figure 3; element 304 represents a mortgage broker and element 306 represents a wholesale lender"; Page 15, para. 0043 recites ... of ..., ... also ... may also be ... file, depending upon the content"; and Page 16, para 0044 recites "... preferred embodiments of our ..., ...".

Making these amendments is not permitted in the Specification. The only amendments allowed are to correct misspelled words, correct figure element numbers, and grammatical errors. For example, page 16, para. 0044 can recite "Having thus described our invention, ...".

Also, There is not any unmarked (Clean Copy) of the Specification filed 04/23/07 found in the file. There are two copies of the marked-up copy of the Specification in the file dated 04/23/07.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

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The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-6 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 1 recites "simultaneously exposing generic mortgage profile information ...". There is nothing in Applicants' Specification relating to "simultaneously exposing generic mortgage profile information" and a specific mortgage lender profile being instantiated with a set of unique lender characteristics for use ... in completing the mortgage transaction. Applicants' Specification recites "exposing generic mortgage profile information".

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 recites "exposing to the broker the at least one generic mortgage lender profile simultaneously exposing ...". This recitation is unclear and indefinite as to what Applicants' mean by "exposing to the broker the at least one generic mortgage lender profile simultaneously exposing ...". Infact, as written the recitation does not make sense. Do Applicants' mean "exposing to the broker at

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least one generic mortgage lender profile and simultaneously exposing ...”? Claim 1 further recites “Applying a given generic mortgage lender profile to given data ... who meet criteria specified in the given data, responsive to entry by the broker of the given data”. This claim limitation is vague and indefinite since there has not been any data given prior to this step. There has been “generic mortgage profile information” in the first step. It cannot be determined where the “given data” is coming from. Do Applicants’ mean the “given data” is coming from the “generic profile information”?

Claim 3 recites “eligibility matrix” and the Specification recites “eligibility matrices”. It cannot be determined what Applicants’ “eligibility matrix” is supposed to be since there is not any definition found in Applicants’ Specification. The terms are very broad, varied and indefinite since they can mean many different things. The terms “eligibility matrix” and “eligibility matrices” was searched and there was not any definition found.

“Patentee can act as his own lexicographer to specifically define terms of a claim contrary to their ordinary meaning does not apply if the written description does not so clearly define the disputed claim term(s) so as to put a reasonable competitor, or one reasonably skilled in the art, on notice that patentee intended to so redefine that term”. *Process Control Corp. v. HydReclaim Corp.* (CAFC) 52 USPQ2d 1029 (9/7/1999).

Claims 2-6 are also rejected since they depend from a rejected base claim.

“An essential purpose of patent examination is to fashion claims that are precise, clear, correct, and unambiguous. Only in this way can uncertainties of claim scope be removed ...”. *In re Zletz* 13 USPQ2d 1320 (Fed. Cir. 1989).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claim 1 is rejected under 35 U.S.C. 102(a) as being anticipated by (US 6,233,566) Levine et al, hereafter Levine.

Claim 1. Levine discloses, A method operative on a web server to facilitate a web-based information exchange between a broker and a set of wholesale lenders, comprising: exposing to the broker a-set-of at least one generic mortgage lender profile over said web-based information exchange, the at least one generic mortgage lender profile simultaneously exposing generic mortgage profile information for a plurality of different specific wholesale lenders (col. 3, lines 7-49); applying a given generic mortgage lender profile to data to identify a set of one or more specific wholesale lenders who meet criteria specified in the given data, responsive to entry by the broker of the given data (col. 3, line 50-col. 4, line 32); and exposing to the broker a specific mortgage lender profile instantiated with a set of unique lender characteristics for use by the broker in completing a mortgage transaction over said web-based information exchange, responsive to selection by the broker of one of the specific wholesale lenders (col. 8, lines 18-65, col. 9, lines 21-52, and col. 10, line 54-col. 12, line 32).

Claim Rejections - 35 USC § 103

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over (US 6,233,566) Levine et al, hereafter Levine in view of (US 2004/0002915) McDonald et al, hereafter McDonald.

Claim 2. Levine failed to disclose, The method as described in Claim 1 wherein the set of unique lender characteristics includes a rate sheet. McDonald discloses, The method as described in Claim 1 wherein the set of unique lender characteristics includes a rate sheet (page 5, col. 1 [0099] and page 7, col. 2 [0160]). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the teachings of McDonald in Levine because such an incorporation would allow Levine to get the current rates from the broker/lender over the Internet or over the telephone.

Claim 3. Levine failed to disclose, The method as described in Claim 1 wherein the set of unique lender characteristics includes an eligibility matrix. McDonald discloses, method as described in Claim 1 wherein the set of unique lender characteristics includes an eligibility matrix (page 6, col. 1 [0114], [0115], [0124], and [0125]). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the teachings of McDonald in Levine because such an incorporation would allow Levine to know whether the broker/lender has a license to be a broker.

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Claim 4. Levine and McDonald failed to disclose, The method as described in Claim 1 wherein the set of unique lender characteristics includes a lock sheet. Lock sheets are old and well-known in the art of mortgages and brokering. A broker lock sheet contains a lock date and lock period when the mortgage or loan is locked in at a certain percentage rate.

Claim 5. Levine failed to disclose, The method as described in Claim 1 further including the step of displaying to the broker mortgage rates and prices. McDonald discloses, The method as described in Claim 1 further including the step of displaying to the broker mortgage rates and prices (page 7, col. 2 [0166]). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the teachings of McDonald into Levine because such an incorporation would allow Levine to know if the loan is to be a "No Point, NoFee" and a calculation of applicable credits if any.

Claim 6. Levine discloses, The method as described in Claim 1 further including the step of having the broker lock a loan online (col. 15, lines 53-57).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Fraser et al (US 5,995,947) disclosed lenders searching for particular types of loans and bidding on loan applications, broker stations, lender stations, and a transaction server.

Frank J. Fabozzi, Chuck Ramsey, and Frank R. Ramirez disclosed mortgage originators.

Business Wire discloses an online wholesale lender network in Utah.

Bowen, Laura discloses Fannie Mae's Desktop Originator to enable lenders to connect with mortgage brokers.

Response to Arguments

Applicant's arguments filed 03/31/08 have been fully considered but they are not persuasive.

Issue no. 1: Applicants' argue: Does Levine's disclosure of (a) communications between a borrower and a mortgage broker, and communications between a lender and investors anticipate claim 1, which requires "information exchange between a broker and a set of wholesale lenders" with an example of information exchange between a broker and a set of wholesale lenders is provide in Figure 1 of the present application has been considered but is not persuasive. Response: Figure 1 of Applicants' invention is labeled as prior art and Figure 2 is also labeled as prior art which means the elements in these drawing figures have been done prior to Applicants' invention and are well-known in the art of mortgages. There are several sections in Levine that address exposing "one or more generic lender profiles". Although Levine does not use the term exposing "one or more generic lender profiles" in col. 21, lines 41-48 –"subscribers (mortgage lenders) each have a profile archive in system 200" and in col. 22, lines 49-59 –"a similar graph can be generated after the buyer performs a search to show only those loans that meet the search criteria. The summary may also include information

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such as weighted averages of FICO score, loan term, loan rate, combined loan-to-value ratio, and debt ratio of loans in the pool. This information can be generated both before and after a buyer performs a search “which is interpreted as the unique lender characteristics (profile) since this is the type of loans the lender is willing to purchase from a seller. Furthermore, the reference only needs to show one lender and not more than one lender because of the claim limitation wording. The servicing company in Levine represents a lender(s). The brokerage companies in the background suggests such a process may be used which means a brokerage company can use this particular system and suggests subscriber-borrowers, banks, brokerage companies and a whole myriad of people can use the system of Levine during the lifetime of a loan which means a broker in col. 5, lines 55-67.

The Examiner does not find in Applicants’ specification reference to a specific mortgage lender profile being instantiated with a set of unique lender characteristics for use ... in completing the mortgage transaction.

Issue no. 2: Applicants’ argue: Levine is simply unrelated to the exchange of information between a broker and a set of wholesale lenders has been considered but is not persuasive. Response: Once the investor has acquired several loan pools, it can access the system via workstation 200e to group together the loan pools to back a security (i.e., create a mortgage-backed security). As shown in Fig. 3, an interface 324 allows the brokerage companies to be able to access system 200 via a workstation 280 ... in col. 16, lines 1-8. “Collateralized mortgage obligations: structures and Analysis”, 2nd Edition by Frank J. Fabozzi, Chuck Ramsey, and frank R. Ramirez defines “the

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original lender as the mortgage originator. Mortgage originators include commercial banks, thrifts, mortgage bankers, life insurance companies, and pension funds” on Page 4.

Although the PTO must give claims their broadest reasonable interpretation, this interpretation must be consistent with the one that those skilled in the art would reach. *In re Cortright* 49 USPQ2d 1464, 1467 (Fed. Cir. 1999). “Having established that this knowledge was in the art, the Examiner could then properly rely, as put forth by the solicitor, on a conclusion of obviousness ‘from common knowledge and common sense of the person of ordinary skill in the art without any specific hint or suggestion in a particular reference. *In re Bozek*, 163 USPQ 545 (CCPA 1969).

The court has consistently taken the tack that claims yet unpatented are to be given the broadest reasonable interpretation consistent with the specification during the examination of a patent application since the applicant may then amend his claims, the thought being to reduce the possibility that, after the patent is granted, the claims may be interpreted as giving broader coverage than is justified. *In re Prater*, 162 USPQ 541 (CCPA 1969).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ella Colbert whose telephone number is 571-272-6741. The examiner can normally be reached on Monday, Tuesday, and Thursday, 5:30AM-3:00PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dixon Thomas can be reached on 571-272-6803. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ella Colbert/
Primary Examiner, Art Unit 3696

April 13, 2009